

## **NATIONAL PRACTITIONER DATA BANK REPORTS**

1. **REASON FOR ISSUE:** This Veterans Health Administration (VHA) Handbook is being re-issued without changes to permit recertification of the policy while it is being more extensively reviewed and revised in conjunction with the publication of new regulation. It contains requirements for health care facilities on reporting information to the National Practitioner Data Bank (NPDB) regarding physicians, dentists and other licensed health care professionals.
2. **SUMMARY OF MAJOR CHANGES:** No changes are being made in the policy or procedures at this time.
3. **RELATED DIRECTIVE:** VHA Directive 1100, to be published.
4. **RESPONSIBLE OFFICE:** The Office of Quality and Performance (10Q), is responsible for the contents of this VHA Handbook.
5. **RESCISSIONS:** VHA Handbook 1100.17, dated September 4, 1996, is rescinded.
6. **RECERTIFICATION:** This document is scheduled for revision or recertification on or before the last working day of September 2003.

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Acting Under Secretary for Health

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## NATIONAL PRACTITIONER DATA BANK REPORTS

### 1. PURPOSE

This Veterans Health Administration (VHA) Handbook provides required procedures for health care facilities on reporting information to the National Practitioner Data Bank (NPDB) regarding physicians, dentists and other licensed health care professionals. **NOTE:** *This handbook does not apply to individuals in training programs, other than licensed physician and dental residents as outlined in subparagraph 6b(2).*

### 2. BACKGROUND

Under the provisions of the Health Care Quality Improvement Act of 1986 (Public Law 99-660), which established the NPDB, and a Memorandum of Understanding (MOU) between the Department of Veterans Affairs (VA) and the Department of Health and Human Services (HHS) reports of certain malpractice payments and certain clinical privileges actions must be submitted to the NPDB and appropriate state licensing boards for VA practitioners. Regulations in Title 38 Code of Regulations (CFR) Part 46 set forth VA reporting requirements and established October 28, 1991, as the beginning date for VA reporting requirements. These reporting requirements apply to all VHA physicians, dentists, and other licensed health care practitioners involved in patient care who are employed, appointed, or utilized under job titles listed in the NPDB document entitled "Field of Licensure Codes" (provided under separate cover in the NPDB Guidebook - VA Supplement) on a full-time (FT), part-time (PT), intermittent, consultant, attending, without compensation (WOC), on-station fee-basis, on-station contract, on-station scarce medical specialty or mutual use/sharing agreement basis. Since the NPDB is unable to assure the identity of any individual in the absence of a license number, individuals who do not have a license will not be reported, except in special circumstances as outlined in subparagraph 6a(2).

### 3. AUTHORITY

VHA facilities will file a report with the NPDB in accordance with regulations in Title 45 CFR Part 60, Subpart B, as applicable, and 38 CFR Part 46 regarding:

- a. Any payment for the benefit of a physician, dentist or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice (subsequent to peer review as outlined in subpar. 6c), and
- b. Adverse clinical privileges actions (e.g., restriction, suspension, denial, revocation, etc.) taken against physicians and dentists that affect privileges for more than 30 days as well as acceptance of surrender of clinical privileges, or restriction of clinical privileges of physicians and dentists when the action is related to professional competence or professional conduct.

**NOTE:** *Malpractice payment reporting applies to all licensed health care professionals. Adverse action reporting applies only to physicians and dentists.*



#### 4. RESPONSIBILITY

a. Facility Directors will assure that physicians, dentists, and other licensed health care practitioners are properly reported to the NPDB and appropriate state licensing boards in accordance with requirements outlined in this handbook. Actions taken under these procedures will be strictly followed and documented. *NOTE: The requirements of this Directive must be incorporated into appropriate medical center publications.*

b. Regional Counsel will provide malpractice payment information to the facility.

c. The facility Director is the authorized representative who approves and signs all submissions to the NPDB. Any delegation of that authority to other facility officials is to be documented to include date of delegation and circumstances governing delegation. The authorized representative for purposes of making reports will be limited to a formally designated Acting Director.

(1) Copies of reports to the NPDB and related documentation will be filed in the reported individual's Credentialing and Privileging Folder.

(2) Procedures to be followed in submitting reports to the NPDB are contained in this handbook. Paragraph 6 addresses NPDB reports related to malpractice payments. Paragraph 7 addresses reports related to clinical privileges actions. Included are guidelines for formal peer review procedures to be followed PRIOR to initiating reports.

d. VHA officials are expressly prohibited from entering into formal or implied agreements not to report an employee in return for a personnel action such as resignation, retirement, accepting a reassignment, etc. VHA officials shall not enter into formal or implied agreements to restrict information that would otherwise be reported under the provisions of this handbook.

#### 5. REFERENCES

a. Public Law (Pub. L.) 99-660 and its revisions (Pub. L. 100-177).

b. Title 45 CFR Part 60.

c. Title 38 CFR Part 46.

d. Title 38 United States Code (U.S.C.) 7401 and 7405.

e. MOU between Department of Health and Human Services and Department of Veterans Affairs, effective October 1, 1990.

f. MP-5, Part II, Chapter 2, and VHA Supplement thereto.

- g. MP-5, Part II, Chapter 9, and VHA Supplement thereto.
- h. National Practitioner Data Bank Guidebook - VA Supplement.

## 6. MALPRACTICE PAYMENTS

### a. Provisions for Reporting Malpractice Payments

(1) Malpractice payments made as the result of a settlement or judgment of a claim of medical malpractice will be reported to the NPDB and state licensing board(s) in all state(s) where practitioners hold licenses as well as in the state where a reportable event occurred, subsequent to a formal peer review as outlined in subparagraphs 6c and 6d.

(2) If it is determined that a practitioner, past or present, claims and/or claimed a license that was not held, but would be reportable under provisions of this policy if a license was held, the practitioner will be reported. In these cases, Item 22.a. of the Medical Malpractice Payment Report form would be completed by inserting the words "No License," and attaching a statement signed by the facility's authorized representative explaining why the report is being filed without a license number.

(3) It is intended that the report be filed within 30 days of the date payment is made. This may not be possible in all cases, in part, because VA is not always notified of such payments within sufficient time to provide the report within the 30 days of payment.

(4) Any corrections, revisions, additions, or voiding of previously submitted reports are to be submitted to NPDB and state licensing boards(s) and any VA offices which received copies of the initial report. Canceled or voided reports will be removed from the practitioner's credentialing and privileging file and filed elsewhere with voided reports. **NOTE:** *Facilities will advise previous recipients of this information that the report to NPDB has been voided.*

(5) Payments made for claims of malpractice in which peer reviewers determine that the standard of care was met and there was no professional incompetence or professional misconduct, or which are due solely to circumstances beyond the control of the practitioner (including, but not limited to power failure, accidents unrelated to patient care, drugs mislabeled by the supplier, equipment malfunction, etc.) shall not be reported.

(6) Claims that are closed without payment, and compensation payments due to an award under the provisions of 38 U.S.C. 1151 are not reportable.

### b. Parameters for Reporting Malpractice Payments

(1) All licensed health care practitioners must be reported according to the requirements of this Handbook.



(2) Attending staff (including contract employees such as scarce medical specialists) are responsible for actions of interns and residents assigned under their supervision. Where the actions of a licensed trainee warrant reporting (for substandard care, professional incompetence or professional misconduct) but not resulting from gross negligence or willful professional misconduct, the attending will be reported without mention of an involved trainee, but with a notification that they are being reported in their supervisory capacity. In circumstances where the Director affirms a peer review conclusion that the payment of a claim was related to substandard care, professional incompetence or professional misconduct resulting from gross negligence or willful professional misconduct on the part of a licensed trainee in a training or residency program, the trainee is to be reported to the NPDB. In this instance, the attending would not be reported unless the peer panel also concluded substandard care, professional incompetence or professional misconduct on the part of the attending in the supervisory role.

(3) Physician residents who function outside the scope of their training program; i.e., who are appointed as the Admitting Officer of the Day (AOD), will be handled and reported, if appropriate, as attendings.

(4) Unlicensed trainees will not be reported since the NPDB is unable to assure the identity of any individual in the absence of a license number, except in special circumstances as outlined in subparagraph 6a(2).

c. **Peer Review.** Upon notification by Regional Counsel that a medical malpractice payment has been (is to be) made, an off-station administrative type of professional peer review will be conducted by reviewers at the appointment of the facility Director. Peer reviewers may be VA employees or procured by contract, but may not be employees of the facility for which payment was made.

d. **Peer Review Panel**

(1) The panel will consist of a minimum of three off-station reviewers who are health care professionals, including at least one reviewer who is a member of the profession/occupation of the practitioner(s) represented in the case and/or claim under review. Reviewers will meet as a panel as opposed to conducting separate individual reviews.

(2) Peer reviewers will conduct a review to determine which practitioners were involved in, or responsible for, the care of the patient related to the acts or omissions for which payment was made. For each of the acts or omissions, and for each of the involved practitioners, the peer panel must determine whether there was substandard care, professional incompetence, or professional misconduct. The panel must address each of the acts and/or omissions for which payment was made, and specifically state for each of the involved practitioners, whether there was substandard care, professional incompetence or professional misconduct. Any concerns or questions about the process or conclusions of the peer review panel must be clarified by the facility Director with the panel charged with making these determinations. In the event that the Director determines that the peer review panel did not meet

VHA policy requirements, the panel will be reconvened to address any lapse; e.g., failure to diagnose when settlement was based on failure to diagnose and treat.

(3) The conclusions of the peer review body shall, at a minimum, be based on review of documents pertinent to the case and/or claim and, to the extent practicable, shall include information collected directly from the individual(s) for whose benefit payment was made. The provider(s) will be provided an opportunity to submit information to be considered by the peer review panel. The information from the individual practitioner(s) may be collected by facility officials prior to the appointment of the peer panel. This information from the practitioner may be submitted in the form of written material and/or audio or video tape. It shall not include the opportunity for a personal appearance. The panel, at its discretion, may request additional information from the practitioner.

(4) The panel must provide a report to the facility Director documenting the group conclusion and clearly delineate the conclusion(s) reached regarding substandard care, professional incompetence or professional misconduct and the rationale for those conclusion(s).

(5) In the event that the Director does not agree with the conclusion of the peer review panel, the Director may consult with others, invite consultants to meet with the panel, provide additional information to the panel if such pertains. The Director may require the panel to consider the additional information and work with the panel, exercising any and all management prerogatives to achieve a reasonable conclusion. The Director may not overturn a final conclusion of a peer panel which would require reporting to the NPDB.

(6) Payment will be considered to have been made for the benefit of a physician, dentist or other licensed health care practitioner when the Director of the facility at which the malpractice claim was based, affirms a conclusion (of at least a majority) of a peer review body that payment was related to substandard care, professional incompetence or professional misconduct on the part of the physician, dentist or other licensed health care practitioner. In any case where professional incompetence or professional misconduct is involved, coordination with other relevant processes should occur (e.g., Professional Standards Board, Disciplinary Appeals Board, or administrative investigations). Any coordination is not intended to delay processes outlined in this Handbook.

e. **Practitioner Review of Report of Malpractice Payment.** Prior to filing a report with the NPDB, the individual under consideration for reporting shall be afforded the opportunity for review of the proposed report and discussion with the facility Director and any other appropriate individuals as designated by the facility Director. The NPDB will send a copy of the computerized report to the facility and to the practitioner with a limited comment period in which to make any changes in the facts of the report. Review of the content of the report prior to submission could be expected to reduce later misunderstanding.

f. **Responsibility for Reporting Malpractice Payments**

(1) At the time a malpractice payment is made, the Regional Counsel must notify the facility. Upon request, Regional Counsel will provide to the facility copies of exhibits pertinent to the claim.

(2) The Director of the VA medical facility must file a report with the NPDB, on behalf of the VA medical facility, or on behalf of any satellite clinics operated by them, regarding any medical malpractice payment that peer review procedures established was related to substandard care, professional incompetence or professional misconduct on the part of a physician, dentist or other licensed health care professional.

(3) A copy of the NPDB report must also be filed with:

(a) The State Licensing Board (SLB) in the state in which the act or omission occurred upon which the medical malpractice claim was based.

(b) The SLB in all states in which the practitioner is licensed.

g. **Forms.** Reports to the NPDB must be submitted electronically using software provided by NPDB, or on the appropriate form(s) supplied by the NPDB. These include:

(1) Medical Malpractice Payment Report. For submission of an initial report; correction, revision, addition or voiding of a previously submitted report.

(2) Additional Information. To complete information regarding any medical malpractice payment report for which the initial reporting form does not allow adequate space to provide all relevant information.

## 7. ADVERSE ACTIONS

### a. Provisions for Reporting Adverse Actions

(1) Actions related to professional competence or conduct that adversely affect clinical privileges of a physician or dentist for a period longer than 30 days must be reported to the NPDB and the SLB in the state in which the facility is located and the SLB in all states where practitioners hold licenses. This report is called an "Adverse Action Report" by the NPDB. For purposes of this Handbook, adverse action is defined as reduction, suspension, or revocation of privileges for a period exceeding 30 days.

(a) Prior to reporting to any SLB or NPDB, appropriate internal VA medical center due process procedures, pursuant to the provisions of VHA Credentialing and Privileging policy regarding reduction and revocation of privileges, will be completed.

(b) Action taken to restore clinical privileges of physicians or dentists previously reported as restricted is to be reported in the same manner as the original report with copies to all recipients of the original report.

(c) Any corrections, revisions, additions or voiding of previously submitted reports are to be submitted to NPDB and state licensing boards in the same manner as the original report with copies to all recipients of the initial report. (Actions to restore privileges previously reduced, suspended or revoked is not considered a void.) Voided reports will be removed from the practitioner's credentialing and privileging file and filed elsewhere with voided reports. Facilities must also advise previous recipients of this information that the report to NPDB has been voided.

(2) Summary suspension of clinical privileges pending review by the executive committee of the medical staff or other review panel is not reportable. Final action by signature of the Director following the review that adversely affects privileges for a period longer than 30 days is reportable.

b. **Parameters for Reporting Adverse Actions**

(1) After consideration of a professional review, the facility Director's determination that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) The acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist while such physician or dentist is under investigation by the health care entity for possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding, whether or not the individual remains in VA service. At the time a physician or dentist surrenders or voluntarily accepts restriction of clinical privileges, or resigns from the medical position in VA while under suspicion of possible professional incompetence or improper professional conduct, they shall be formally notified that reporting to the NPDB is required and shall be offered due process (as outlined in VHA's Credentialing and Privileging policy regarding reduction and revocation of privileges). Individuals who choose not to avail themselves of the due process procedures waive their right to due process and will be reported.

(3) It is intended that the report be filed within 15 days of the date the action is made final by signature of the VA medical center Director.

c. **Practitioner Review of Report of Adverse Action.** Prior to approving the report, the facility Director will notify the practitioner to be reported and provide an opportunity for discussion with appropriate facility officials, including the Director, before the report is submitted. The NPDB will send a copy of the computerized report to the facility and the practitioner with a limited comment period in which to make any changes in the facts of the report. Review of content prior to submission would reduce later misunderstanding.

d. **Responsibility For Reporting Adverse Actions.** The Director of the VA medical facility will file an adverse action report, on behalf of the VA medical facility and on the behalf of any satellite clinics operated by them, within 15 days of the date the action is made final by signature of the facility Director, with:

- (1) NPDB,
- (2) The SLB in the state in which the facility is located (copy), and
- (3) The SLBs in all states in which the practitioner is licensed (copy).

e. **Forms.** Reports to the NPDB will be submitted electronically using software provided by NPDB or on the appropriate form(s) provided by the NPDB. These include:

- (1) **Adverse Action Report.** For submission of initial report, correction, revision, addition, or voiding of a previously submitted report.
- (2) **Additional Information.** For completing information regarding any adverse action report for which the initial format does not allow adequate space to provide all relevant information.